

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.8670 of 2013

Pratap Chandra Jena

.... ***Petitioner***
Mr. S.B. Jena, Advocate

-Versus-

State of Odisha and others

.... ***Opposite Parties***
Mr. P.K. Panda, AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

ORDER
01.08.2022

Order No.

R.K. Pattanaik, J

09.

1. Instant writ petition is filed by the Petitioner challenging the legality and judicial propriety of the impugned order dated 18th January, 2013 (Annexure-17) passed in OA.No.1369(C) of 2004 by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack (hereinafter referred to as 'the Tribunal') on the grounds *inter alia* that the claim and decision relating to the benefit of scale pay as per ORSP Rules, 1998 with effect from 1st January, 1996 by the Tribunal being barred by limitation is not sustainable in law which thus liable to be set aside with a need for direction to the opposite parties to disburse the differential amount consequent upon revision of scale of pay as per the above Rules.
2. In fact, the Petitioner was appointed as a Headmaster on 12th August, 1972 by the then Managing Committee in the pay scale of Rs.215-385/- with usual DA admissible as per the rules but it

was refixed under Annexure-3 at Rs.185-325/- due to lack of seven years of teaching experience. According to the Petitioner, Annexure-3 was withdrawn vide Annexure-5 and thereafter, his promotion to the post of Headmaster was approved under Annexure-6. It is contended that the Government in Education & Youth services Department by letter dated 26th December, 1983 (Annexure-7) intimated the Director Secondary Education, Orissa that the provision under sub-rule(2) of Rule 14 of the Orissa Sub-ordinate Education Service (General Branch) and (Women's Branch) Rules, 1972 providing that no member of the Junior Grade shall be considered for promotion to the Senior Grade of the service (Headmasters/Headmistresses) would only be applicable in respect of Aided Schools with effect from 1st April, 1975 and as he having been appointed prior to the aforesaid date, the above requirement was inapplicable. Therefore, as per the Petitioner, he was entitled to disbursement of the differential amount on revision of his scale of pay as per the ORSP Rules, 1998 which was denied by the Tribunal on the ground that it was barred by limitation but the same is factually incorrect since he had initially approached this Court in OJC No.3134 of 1992 for fixation of scale of pay from the date of appointment which was disposed of 1993 vide Annexure-10 with a direction to O.P.No.3 to regularize the pay and refix it from 12th August, 1972 to 1st January, 1990 as per Annexure-7 and thereafter, when his requests did not yield any result, he then filed O.A. No.255(C) of 2002 before the Tribunal which was disposed of vide Annexure-14 for consideration of the representations by authorities within three months and in view of the above facts, the finding of the Tribunal is totally misplaced.

Lastly, the petitioner contended that despite a clarification issued under Annexure-8 by the Education Department, Government Orissa and notwithstanding the fact that similarly circumstanced persons were granted the benefit by the Tribunal by orders under Annexure-16 series, denial of it cannot be justified and hence, the impugned order (Annexure-17) deserves to be set aside followed by consequential order.

3. Heard learned counsel for the parties at length.

4. Mr. Jena contends that nevertheless the Petitioner was appointed as a Headmaster and was not having any teaching experience and therefore, the pay was fixed according to Annexure-3 but it was subsequently withdrawn vide Annexure-5 and that part, Rule 14(2) of Rules, 1972 was made applicable only in respect Aided Schools with effect from 1st April, 1975 which was further clarified under Annexure-5 and hence, was entitled to the relief which was unduly denied by the Tribunal and that too on the ground of limitation which is not all justified considering the fact that such claim was being pursued ever since the order of this Court passed in OJC No.3134 of 1992 vis-à-vis fixation of pay as well as revision of scale of pay as per the ORSP Rules, 1998.

5. Mr. Panda, learned ASC contends that the Tribunal examined the claim of the Petitioner and rightly refused the relief being barred by limitation, the reason which has been assigned in the impugned order (Annexure-17) itself and that apart, he is not entitled to the benefit in view of criteria for promotion from Junior Grade to Senior Grade as per the Rules, 1972.

6. The conclusion of the Tribunal that the claim of the Petitioner as barred by limitation cannot be sustained for the fact that he had approached this Court in OJC No.3134 of 1992 for refixation of scale of pay from effect from 12th August, 1972 to 1st January, 1990 and after the school was taken over by the Government, had approached the Tribunal in O.A. No.255(C) of 2002 and finally, landed up filling OA No.1369(C) of 2004. In other words, the Tribunal erred in concluding that the claim to be time barred.

7. The school was taken over by the Government's resolution dated 16th December, 1994. At the time of fixation of pay under ORSP Rules, 1998, it was said to have been objected to by O.P.No.2 in view of the fact that the condition in Annexure-8 was substituted by the Government order dated 24th February, 1994 which prescribed seven years of teaching experience for receiving the scale of pay of Headmaster appointed prior to 1975 but according to Petitioner, the same was not applicable since he had been receiving pay as per ORSP Rules, 1989 and the above Government order cannot have a retrospective effect. Mr. Jena while placing reliance on Annexure-7 applicable to Aided School with effect from 1st April, 1975 and seven years rule inapplicable vis-a-vis appointments prior to the aforesaid date clarified in Annexure-8 contended that the benefit which the Petitioner is entitled to could not have been denied all the more when the same was not opposed by the opposite parties so revealed from their counter affidavit (Annexure-9) filed in OJC No.3134 of 1992 which, in the considered view of the Court, is absolutely justified. Furthermore, by referring to Annexures-11 & 15, it is claimed that the Petitioner's scale of pay ought to have been

fixed at Rs.2975/- as on 1st January, 1996 instead of Rs.2675/-. Mr. Jena apprised the Court that despite the orders of the Tribunal (Annexure-16 series) being upheld by the Supreme Court in Civil Appeal No.3190 of 1999 disposed of on 4th January, 2001 filed by persons similarly situated, the Tribunal dismissed the claim of the Petitioner again without deciding it on merit.

8. Having considered the submissions of the learned counsel for the parties, the Court reiterate its view that the Tribunal not only fell into error in reaching at the conclusion that the claim of the Petitioner to be time barred but also denied the relief which he was otherwise lawfully entitled to. Though the Petitioner was appointed in 1972 which received approval under Annexure-6 but the claim for revision of scale of as per the ORSP Rules, 1998 was rejected even though Rule 14(2) of the Rules, 1972 was not applicable to him since it was directed in respect of teachers appointed as Headmasters by the Managing Committee with effect from 1st April, 1975 as discernable from Annexure-7 and subsequently clarified in Annexure-8 to the effect that the seven years rule is inapplicable vis-à-vis appointments made prior to the above date. That apart, such claim was admitted in the counter affidavit dated 11th August, 1992 filed OJC No.3134 of 1992 regarding the entitlement of the Petitioner by stating that he is eligible to draw salary in the scale of pay of the Headmaster with effect from the date of his appointment besides all other financial benefits. The Court further takes judicial notice of the fact that there has been anomaly even in the fixation of pay in respect of which an affidavit dated 18th April, 2022 was filed

pursuant to its order dated 13th March, 2022 by contending that it was fixed at Rs.2675/- as on 1st August, 1992 by the order under Annexure-11 in juxtaposition to Annexure-15 which should have been at Rs.2975/- as on 1st January, 1996. Mr. Panda, learned ASC though vehemently challenged the claim of the Petitioner but considering the fact that Rule 14(2) of the Rules, 1972 clearly applies to the Aided schools vis-à-vis Headmasters appointed after 1st April, 1975 and the fact that seven years rule is inapplicable to such appointments, such objection is liable to be rejected. In other words, the impugned order under Annexure-17 passed by the Tribunal denying the relief to the Petitioner shall have to be interfered with and set aside in order to enable the Petitioner to receive the benefits as he is entitled to the scale of pay as per the ORSP Rules, 1998.

9. Accordingly, it is ordered.

10. In the result, the writ petition stands allowed. As a logical sequitur, the impugned order under Annexure-17 passed by the Tribunal in OA.No.1369(C) of 2004 is hereby set aside with a direction to the authorities concerned to disburse the differential amount payable to the Petitioner consequent upon the revision of his pay as per ORSP Rules, 1998 preferably within six weeks and in case not later than 30th September, 2022. In the circumstances, however, the parties are directed to bear their respective costs.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice